

## REMARKS

In the Office Action mailed on April 1, 2005, the Examiner rejected Claims 1, 7, 15 and 16 as being anticipated by Molodow. The Examiner also rejected Claims 2-6, 8, 12-14 and 22-26 as being obvious in view of Kleva (5,845,631) over Molodow. Claims 9-11 and 17-21 were also rejected as being obvious in light of the aforementioned patents. In response, Applicant has amended independent Claim 22 to more clearly distinguish the present invention from the cited prior art. For the reasons stated below, Applicant now believes the present invention to be in condition for allowance.

Amended Claim 22 now clearly recite that a premixed air/gas mixture passes through the ports in the burner plate and is ignited such that the burner plate acts as a flamestrip. This is neither disclosed nor even suggested by Molodow.

Molodow is concerned with a specific burner application relating to the melting of glass/fiber optics, for which extremely high temperatures are required in the region of 3000°C or more. Thus, it is essential to the Molodow invention to provide a multiplicity of jets, along which oxygen is passed into a combustion chamber. This more closely resembles the in-shot burner arrangement of Kleva than that of the present invention. The plate used in Molodow merely performs the function of a mounting plate for the jets and does not function as a burner plate as now defined in the new main claim.

Furthermore, Molodow does not disclose a burner arrangement for use in conjunction with heat exchanger tube inlets as claimed in the present application but is instead entirely concerned with burners for use in glass blowing in the fiber optics field. In addition, the chamber 120 in Molodow contains only oxygen and it is only within the combustion chamber 100 that the oxygen mixes with

other combustion gases. Only oxygen passes through the ports in the mounting plate of Molodow in contrast to the wording of the main claim in the present application, which requires a premixed air/gas mixture to pass through the ports. In this regard, Molodow does not make use of atmospheric air in the same manner as the present invention.

Molodow does not disclose any subject matter which would add to the teachings of Kleva to direct a skilled person towards the invention of the present application as now claimed.

The remaining claims are dependent on Claim 22 and believed allowable for all the same reasons.

Finally, the combination of Molodow and Kleva is untenable.

It is improper to combine references to achieve the invention under consideration unless there is some incentive or suggestion in the references to do so.

The Court of Appeals for the Federal Circuit has repeatedly held that under Section 103, teachings from various references can be combined only if there is some suggestion or incentive to do so. ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F2d 1572, 221 USPQ 929 (CAFC 1984).

Stated another way:

It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps...The references themselves must provide some teaching whereby the applicant's combination would have been obvious. In re Gorman, 18 USPQ2d 1885 (CAFC 1991).

The Examiner is required to follow the law as set forth by the Federal Circuit. In summary, the combination of patents to achieve the claims of the present invention is untenable.

It is believed that the application is now in condition for allowance and such action is earnestly solicited. If any further issues remain, a telephone conference with the Examiner is respectfully requested. If there are any charges associated with this amendment, the Examiner is hereby authorized to charge such charges to Deposit Account No. 08-1500.

HEAD, JOHNSON & KACHIGIAN

Respectfully submitted,

  
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Date: July 1, 2005